

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT

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IN RE PERSEON CORPORATION,  
formerly known as BSD Medical  
Corporation,

Debtor.

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B.E. CAPITAL MANAGEMENT FUND  
LP,

Appellant,

v.

PERSEON CORPORATION, formerly  
known as BSD Medical Corporation,

Appellee.

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BAP No. UT-16-023

Bankr. No. 16-24435  
Chapter 11

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ORDER TO SHOW CAUSE WHY  
APPEAL SHOULD NOT BE  
CONSIDERED FOR DISMISSAL AS  
INTERLOCUTORY

A review of the documents in this appeal suggests that the order appealed may not be a final order. See *Catlin v. United States*, 324 U.S. 229, 233 (1945) (An order is final if it “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”). Interlocutory orders may be appealed only with leave of the Court. 28 U.S.C. § 158(a)(3); Fed. R. Bankr. P. 8004(a); *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 768 (10th Cir. BAP 1997).

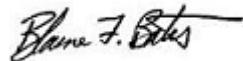
Accordingly, it is HEREBY ORDERED that:

- (1) Within fourteen (14) days from the date of this Order, the Appellant shall file with the Court a memorandum of law setting forth the Appellant’s

position regarding whether the order appealed is final, or whether leave to appeal an interlocutory order should be granted. If the Appellant seeks leave to appeal the order, the motion for leave to appeal should comply with Federal Rule of Bankruptcy Procedure 8004(b).

- (2) The Appellee's response, if any, is due seven (7) days from the date of service of the Appellant's memorandum or motion.
- (3) Failure to respond to this Order will result in the dismissal of this appeal for failure to prosecute. Fed. R. Bankr. P. 8003(a)(2); 10th Cir. BAP L.R. 8026-4(b), (c).

For the Panel:



Blaine F. Bates  
Clerk of Court